UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

PYRAMID AUTO GROUP, INC., Debtor

Case No. 06-31435
Chapter 11 Case

MOTION FOR AN ORDER (i) REOPENING CHAPTER 11 CASE AND (ii) LIFTING THE DISCHARGE INJUNCTION TO ALLOW THE CITY OF AUBURN TO COMMENCE TAX FORECLOSURE PROCEEDINGS ON CERTAIN OF THE DEBTOR'S PROPERTIES

The City of Auburn (the "City"), by and through its attorneys, Bond, Schoeneck & King, PLLC, hereby moves for an order (i) reopening the chapter 11 case of the above-captioned debtor Pyramid Auto Group, Inc. (the "Debtor") pursuant to section 350 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 5010 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and (ii) lifting the discharge injunction contained in section 1141(d)(1) of the Bankruptcy Code to allow the City to commence tax foreclosure proceedings on certain of the Debtor's properties and confirming that the City's liens are not impacted by Debtor's bankruptcy proceeding. In support of the Motion, Auburn states as follows:

Preliminary Statement

1. On December 29, 2004 (the "Commencement Date"), Pyramid Auto Group, Inc. (the "Debtor") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

2. Prior to the Commencement Date, the Debtor was engaged in the business of selling used cars and operating and maintaining "some twenty-five separate" income producing rental properties located in the Auburn, New York.

3. The Debtor's Third Amended Plan of Reorganization provided that (i) priority unsecured claims[1] "will be paid in full in accordance with the proof of claims that have filed [sic] with the Bankruptcy Court and (ii) administrative claims "will be paid in cash commencing on the effective date of the Plan of Reorganization unless the holder of any such claim agrees to a different treatment." *See* Plan at Article IV.

4. This Court entered an Order Confirming the Debtor's Third Amended Chapter 11 Plan of Reorganization (the "Plan") on January 22, 2008 and a Final Decree and Order of Substantial Consummation on August 4, 2008 (the "Effective Date"). The Plan also contained the Debtor's intentions to convey certain property to the City of Auburn and States Resources Corporation, the mortgagee of certain of the Debtor's properties (the "Mortgagee") to satisfy the real property tax liens and mortgage liens held by those secured creditors. To the City's knowledge, no such surrender took place.

5. The Debtor's Plan provided that the City of Auburn and Cayuga County would be paid on account of the tax obligations arising prior to the Commencement Date in 28 quarterly payments of $4,587.71. *See* Plan at Article IV.

6. Despite the language contained in Article IV of the Debtor's Plan, only one quarterly payment of $4,587.71[2] was made to the City of Auburn/Cayuga County.

7. As of the date hereof, Debtor has remaining outstanding tax liability to the City of Auburn and Cayuga County of $150,500.94 for amounts incurred prior to the Commencement Date (the "Prepetition City/County Tax"), $66,283.84 for amounts incurred during the pendency of the chapter 11 case (the "Administrative City/County Tax") and

[1] The City filed a priority claim in the amount of $161,182 and the Debtor set forth the amounts of tax claims for City of Auburn/Cayuga County as a "priority unsecured claim" of $161,182 (without the reduction for property the Debtor planned to surrender but did not).
[2] It is unclear whether this payment was intended to be a payment under the Plan. Other minimal payments made by the Debtor were indentified to be applied to post-effective date obligations.

$51,550.42 for tax liability arising after the Effective Date (the "Remaining City/County Tax"). The total amount of the tax lien for taxes owed to the City on the Debtor's remaining properties is $269,335.60. A more complete calculation of amounts owed is set forth in Exhibit A hereto.

8. On December 29, 2010, the Mortgagee, which holds mortgage liens on several of the Debtor's properties, filed a Petition to Appoint a Receiver Pursuant to CPLR § 5228, Sell the Subject Properties and Distribute the Proceeds in Accord with the Priority Liens Maintained by the Secured and Unsecured Creditors (the "SRC Petition") in the Supreme Court in the State of New York, Cayuga County with regard to the following properties. (i) 54 Chapman Ave; (ii) 56 Chapman Ave; (iii) 1-3 Perrine Street; (iv) 69 Seymour Street; (v) 13 Wall Street; (vi) 4-6 Washington Street; and (vii) 71-73 Seymour Street (collectively, the "SRC Mortgage Properties"). The SRC Petition alleges that the Debtor is eight months in arrears for payments to SRC scheduled under the Debtor's Plan. To the extent the SRC Mortgage Properties are sold by SRC, the City would require payments on outstanding tax liabilities for City/County taxes in the amount of $119,816.58 (including the portions of the Prepetition City/County Tax, the Administrative City/County Tax and the Remaining City/County Tax attributable to the SRC Mortgage Properties).

Relief Requested

9. The Bankruptcy Code permits the reopening of a debtor's case for "cause." Section 350(b) of the Bankruptcy Code provides: "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). The City submits that the Debtor's failure to comply with the terms of its Plan constitutes cause in this case.

10. Additionally, the City respectfully requests that the Court enter an order permitting the City to foreclose all of the properties and to receive all amounts due pursuant to its real property tax liens. Pursuant to Article XIII of the Debtor's Plan, the Court retains jurisdiction to require the performance of actions necessary for consummation of the Plan. The City respectfully submits that it should be permitted to commence foreclosure proceedings despite the discharge injunction set forth in section 1141(d)(1) of the Bankruptcy Code even without a court order. *See e.g. In re Nylon Net Co.*, 225 B.R. 404 (Bankr. W.D. Tenn. 1998). However, out of an abundance of caution, the City respectfully requests that the Court reopen the Debtor's Bankruptcy Case to allow the City to foreclose the Debtor's interests in all subject properties.

11. The City is requesting the Court's authority to proceed with tax foreclosure proceedings out of an abundance of caution, as the City's tax liens for the Prepetition City/County Tax, the Administrative City/County Tax[3] and the Remaining City/County Tax remain in place despite the 1141(d)(1) discharge injunction. Secured creditors such as the City are not required to file proofs of claim to preserve such liens, and valid liens pass through bankruptcy unaffected regardless of whether the secured creditor asserts such claim in bankruptcy. *See also In re Richard Hamlet,* 322 F3d 342 (4th Cir. 2003) *citing Cen-Pen Corp. v. Hanson*, 58 F.3d 89, 92 (4th Cir. 1995) ("[a] bankruptcy discharge extinguishes only *in personam* claims against the debtor(s), but generally has no effect on an *in rem* claim against the debtor's property"), citing *Dewsnup v. Timm*, 502 U.S. 410 (1992) ("the creditor's lien stays with the real property until the foreclosure").

[3] Although the City did not file a proof of claim for the Administrative City/County Tax, this failure does not have an impact on the City's ability to enforce its tax liens.

12. For all the foregoing reasons, the City respectfully requests that the Court issue an Order reopening the Debtor's chapter 11 case and modifying the discharge injunction to allow the City to enforce its rights with regard to its tax liens against the Debtor.

WHEREFORE, the City respectfully requests that the Court issue an Order (i) reopening the Debtor's chapter 11 case pursuant to 11 U.S.C. § 350; (ii) lifting the discharge injunction contained in 11 U.S.C. § 1141(d)(1) to allow the City to commence tax foreclosure proceedings on certain of the Debtor's properties; and (iii) granting such other relief as the Court deems just and proper.

Dated: May 28, 2010
Syracuse, New York

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC

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